IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6769 OF 2004

Latur Zilla Motor Mal Vahatuk
Sahakari Sanstha Maryadit ...Petitioner

vs.

The Union of India & six others. ...Respondents

Mr.Y.S.Jahagirdar with Mr.G.S.Godbole for Petitioner

Smt.S.I.Shah, for Respondent no.2

Shri.D.A.Dubey for Union of India-Respondent no.1.

Shri.Nitin Jamdar, for Respondent no.6.

CORAM: A.P.SHAH & S.U.KAMDAR, JJ.

DATED: 20th September,2004.

P.C.:-

1. Heard Advocates.

2. Respondent no.2 had invited offers by floating a tender for appointment of loading/unloading, handling and transporting contracts at C.W.C. Godowns/Plinths and Rail Head at Latur. The contract was for the period of three months, and two envelopes system was to be followed in the said contract. The petitioner alongwith the respondent nos. 3 to 6 had submitted the tenders. The petitioner claims the second respondent rejected the tender of the Petitioner for ulterior reasons

though the Petitioner’s bid was lowest and the Corporation

could save near about Rs.27,00,000/- if the petitioner’s tender was accepted.

3. We have heard learned Counsel appearing for the parties. Perused the affidavit of second respondent and report of the Regional Tender Evaluation Committee. The Tender Evaluation Committee in its report dated 28th July,2003, has come to the conclusion that the Petitioner is financially incompetent to execute the work. The solvency certificate produced by the petitioner is not in the prescribed form. It appears that the solvency certificate was issued by the Bank on the basis of property of one Shri.Sayyed Tajuddin Sayyed Wahadali owned by him in his individual capacity. The members of Regional Tender Evaluation Committee also visited the Bank to ascertain the financial position of the Petitioner. It is pointed out by the Committee that balance in the Petitioner’s account was only Rs.5000/- and cash balance in hand only of Rs.75/-. It is further pointed out that financial soundness of the tenderer is required to be assessed to ascertain his capacity to meet with duties and responsibilities of the tenderer as per the tender conditions.

4. Condition no.3, Clause VII provides that "the contractor is required to fully indemnify the Corporation against all payments, claims and liabilities whatsoever incidental or direct, arising out of or for compliance with or enforcement of the provisions of the above said acts or similar other enactments of the country as they are present or as they would stand modified from time to time to the extent they are application to the establishment/works in the Corporation. Clause XII provides for "liability of contractor for losses etc. suffered by Corporation" and clause XXI (10) provides that "the Contractor is required to make payment of freight in the first instance if consignment received has been booked "freight to pay"." It is also seen from the records that at no time the Petitioner was functioned as a Society and has no occasion to function as H & T Contractor. It has no work experience. It is also seen that the petitioner-society has failed to submit necessary documents and information as per the tender conditions. The petitioner has failed to incorporate the information as per Appendix II of the tender document. Similarly no information has been incorporated in the proforma for ascertaining financial position of the Petitioner. Even,

the resolution of the society is not produced though the tender conditions require the Society to produce the Resolution of the General Body. It appears that rates

quoted by the Petitioner were lower than the market rate, therefore, the committee decided not to negotiate the tender considering the various grounds such as non-satisfactory financial position and total lack of work experience in such contract work.

5. We do not find any illegality or infirmity in the decision taken by the second Respondent. Writ Petition accordingly dismissed.

(A.P.Shah, J.)

20.9.2004. (S.U.Kamdar, J.)